IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17423 of 2003
with
SPECIAL CIVIL APPLICATION No 17431 of 2003
with
SPECIAL CIVIL APPLICATION No 17432 of 2003
with
SPECIAL CIVIL APPLICATION No 17492 of 2003
with
SPECIAL CIVIL APPLICATION No 17744 of 2003
with
CIVIL APPLICATION NO. 4748 of 2004
in
SPECIAL CIVIL APPLICATION No. 17423 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMINARAYAN EDUCATION & WELFARE TRUST

Versus

DIST. EDUCATION OFFICER

Appearance:

MR R.M. SHAH for Petitioners

MR AD OZA GOVT. PLEADER with MR. HD GAVE, AGP for Respt No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 16/08/2004

COMMON ORAL JUDGEMENT

1. The facts in all these petitions are common and there are common questions, and they are, therefore, dealt with by this common judgment.

2. The petitioners have preferred these petitions against the respondents for quashing and setting aside the order dated 20th October 2003 passed by the District Education Officer, Surat, whereby the payment of the grant is withheld.

3. Heard Mr. Shah for the petitioners and Mr. A.D. Oza, learned Government Pleader with Mr. H.D. Dave, learned Assistant Government Pleader for the respondents.

4. Short facts of the case are that it is the case of the petitioners that in response to the advertisement by the Gujarat Secondary Education Board, applications were made by the petitioners for grant of permission to open school of different standards. It appears that thereafter, the Gujarat Secondary Education Board ultimately granted permission to the petitioners, except in case of Spl. C.A. No. 17423 of 2003 filed by Shri Laxminarayan Education & Welfare Trust because formerly the school was run by Swaminarayan Manav Seva Trust, and it is the case of the petitioner therein that the management of the Trust and the School is taken over by Shri Laxminarayan Education & Welfare Trust and the application for transfer is also pending. It appears that Gujarat Secondary Education Board passed the order granting permission for opening of the schools/certain classes at the secondary level, but one of the conditions in the said order dated 27.4.2000 was that by granting of such permission for the schools/classes, there is no automatic eligibility to get grant from the State Government. The said aspect is reflected in the order after condition No. 21 of the order dated 27.4.2000. It is the case of the petitioners further that after the permission was granted by the Board, the petitioners started the schools, and for appointing certain staff, No Objection Certificates were also given by the District Primary Education Officer, Surat and certain staff was absorbed. As per the petitioners, the applications for

sanctioning of grant were also made through the District Education Officer and the case of the petitioners further is that the District Education Officer started disbursing the grant and the petitioners bonafide believed that D.E.O. must have passed the order for disbursement after getting sanction from the competent authority. The disbursement of grant continued upto October 2003 but on 20th October 2003, the D.E.O. communicated the Treasury not to disburse the grant to the petitioners. The said orders of the D.E.O. passed against the concerned respective petitioners, are under challenge in these petitions.

5. Mr. Shah, learned counsel appearing for the petitioners raised a contention that once the permission was granted by the Board with grant facilities to the school, it is expected of the Government to sanction the grant. He alternatively submitted that even if the State Government has to sanction the grant, the petitioners did apply through D.E.O. and as the disbursement of the grant was made, the petitioners bonafide considered that the grant is sanctioned and is, therefore, being paid. He submitted that the petitioners were not aware about the internal correspondence between the D.E.O., the Commissioner, Higher Secondary, Mid-day-Meal Scheme and the competent authorities of the Government who have power to sanction the grant. He also submitted that the order dated 20th October 2003 passed by the D.E.O. not to disburse the grant and withholding of the grant is in breach of the principles of natural justice inasmuch as no opportunity of hearing has been given by the D.E.O. or any other authority before such order is passed, and, therefore, he submitted that the order passed by the DEO deserves to be quashed and set aside.

6. Mr. Shah, during the course of hearing, has placed on record copy of the order dated 21st June 2004 passed by Education Department of the State Government whereby grant has been sanctioned in respect of 11 schools including all the petitioners herein from June 1999 or from the period during the academic year in which the school has started, whichever is later. Mr. Dave, learned AGP appearing for the respondent has also admitted the position regarding passing of the order by the State Government for sanctioning of the grant dated 21st June 2004 as per the new policy and Mr. Dave stated that the State Government would be bound by the said order unless the order is modified or set aside by any higher forum.

7. Mr. Shah also submitted that as such the

Government has sanctioned the grant as per the aforesaid order dated 21.6.2004. However, he submitted that the sanctioning of the grant is as per the new policy, and it may have further wider repercussions on the appointment of the staff who were appointed by the concerned petitioners after the NOC was granted by the DEO. He further submitted that this Court may suitably make observations for the period during which the grant came to be disbursed by the DEO and for considering that the school bonafide proceeded for appointment of the staff under the NOC granted by DEO and the appointment of such staff are already made.

8. On behalf of the respondent authorities, the affidavit-in-reply has been filed, which has been relied upon by the learned AGP. It is the contention of the respondent that merely because the Board granted permission for registration of the school with grant facility, the same would not automatically confer right upon the petitioners to avail of the grant facilities. It has been further submitted that the competent authority to sanction the grant is not DEO but the Commissioner, Higher Education, Mid-day-Meal and the competent authority of the State Government. It has been submitted that no sanction is obtained by the DEO from the competent authority of the State Government before disbursement of the grant, and, therefore, it was accordingly communicated and the DEO, as per the order dated 20th October 2003, has stopped the disbursement of the grant. Therefore, it has been submitted by the learned Assistant Government Pleader that the order passed by DEO cannot be said to be illegal. Mr. Dave, learned AGP during the course of hearing submitted that the same is in view of the order passed by this Court in LPA as stated in the order itself, and, therefore, he submitted that the order which is passed by the Division Bench should be allowed to hold the field.

A perusal of the said order passed by the State Government shows that it has been passed in view of the order passed by this Court on 25.8.2003 in LPA No. 482 of 2003 arising from Spl. C.A. No. 8847 of 2002. Further, the said order shows that grant has been sanctioned as per new policy of the Government and as a special case. Further, in the said order, it has also been referred that if any appointment is irregularly made, the same shall not be regularized and the appointment has to be strictly as per the provisions of the grant-in-aid Code, and as per the provisions of the Gujarat Secondary Education Act.

9. Considering the above, it appears that the State Government is right in contending that merely because the Board granted permission for registration of the school, the same would not automatically confer the right upon the petitioners to avail of the grant facility. As such it was for the petitioners to apply for sanctioning of the grant, and it is the case of the petitioners that they did apply to the authority for sanctioning of the grant through DEO. It also appears that as per the statement made in the affidavit-in-reply filed by Mr. H.R. Suthar, Joint Director, Education Department, the grant in respect of the petitioner-schools is not sanctioned by the State Government, and DEO had passed the order of disbursement of the grant eventhough such grant was not sanctioned by the competent authority. If such is the situation, then in that case, the action of the DEO of disbursement of the grant in favour of the petitioner-schools cannot be said to be legal and valid in the eye of law, and such action on the part of the DEO of disbursement of the grant would be rendered without any authority. If the initial action of disbursement of the grant in favour of the petitioner by DEO is without any authority and when it is brought to the notice of the DEO by the State Government, and if the DEO passed on the said aspect staying the disbursement of the grant by the impugned order dated 20th October 2003, it cannot be said that the impugned order is illegal or deserves to be quashed and set aside. On the contrary, by the impugned order, the disbursement of the amount which is not sanctioned is stopped and such a measure undertaken by DEO through the impugned communication cannot be said to be illegal in the eye of law. When the initial action for disbursement of the grant by DEO was without sanction of the competent authority of the State Government, and if by that impugned order what is stopped is disbursement of the grant, it cannot be said that for passing the order for stoppage of the grant any principle of natural justice is required to be followed, and, therefore, I cannot accept the contention of Mr. Shah that the impugned order dated 20th October 2003 passed by DEO requires to be quashed in view of the breach of principles of natural justice. It is well settled that if the action is taken by way of curing measure for correcting the mistake, the principles of natural justice may not have any applicability. I am inclined to take such a view because even as per the petitioners, it is not their case that sanction was granted by the State Government or the competent authority of the State Government, but the case of the petitioners is that they applied through DEO and they bonafide believed that the grant is sanctioned.

10. It is required to be recorded that as observed earlier, on 21st June 2004, even otherwise also, the competent authority of the State Government has sanctioned the grant in respect of the schools run by the concerned petitioner Trust. Therefore, for future period the order dated 21st June 2004 passed for sanctioning of the grant may continue to prevail. At the same time, the correction of a mistake cannot be equated fully with the action for recovery of the difference of the grant or for recovery of the salary or otherwise. It may be that on account of the order dated 21st June 2004 passed by the State Government of sanctioning the grant as per the new policy, the question may arise for recovery of the difference or for considering the payment made to the staff under the NOC granted by DEO at the relevant point of time. While examining such aspect of recovering the difference or for taking further actions in this regard on the basis of the order dated 21st June 2004 passed by the State Government, the authority may be required to examine as to whether the petitioners were carried under the bonafide belief or the staff or the concerned employee of the petitioners have also altered their position in bonafide belief or not. The authority while considering the said aspect may also consider the question as to whether it is possible to regularize the action already taken for disbursement of the grant during the period when DEO ordered for disbursement and the grant which came to be actually disbursed to the petitioners. As such, for examining of the aforesaid aspects, it would be required for the concerned authority of the State Government to issue a notice for such purpose, and if such a notice is issued the petitioners may raise all contentions which may be available under the law and after the proper hearing is given to the petitioners, the authority may be in a position to take appropriate decision as to whether the difference should be recovered or be regularized or the appointments are to be regulzrised or not. Since in the present petition it is not coming on record that any show cause notice has been issued for such purpose, the said aspect is not required to be examined in detail at this stage and suffice it to say that the rights and contentions of both the sides in the appropriate proceedings shall remain open.

11. So far as the petitioners of Spl. C.A. No. 17423/03 is concerned, it is the case of the respondent authority that no permission is obtained for transfer from Swaminarayan Manav Seva Trust to Shri Laxminarayan Education & Welfare Trust whereas the case of the

petitioner is that application is already made, and not only that but when NOC came to be granted for appointment of certain staff, it has been granted during the period when Shri Laxminarayan Education & Welfare Trust was managing the affairs of the School. As the application is pending before the appropriate authority for granting permission to transfer, it will be for the authority of the respondent to examine the same and to pass appropriate orders in accordance with law.

12, In view of the above, subject to the aforesaid observations, all the petitions fail and they are dismissed with costs.

13. In view of the order passed in the main Special Civil Application No. 17423/03, Civil Application No. 4748/04 would not survive and shall stand disposed of accordingly.

[JAYANT PATEL, J.]

mathew